

ORIGINAL

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, DC 20554

In the Matter of

Assessment and Collection of  
Regulatory Fees for  
Fiscal Year 1999

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) MD Docket No. 98-200  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REPLY COMMENTS OF  
PRIMECO PERSONAL COMMUNICATIONS, L.P.**

PrimeCo Personal Communications, L.P. ("PrimeCo"),<sup>1</sup> hereby submits the following brief reply comments in support of those parties' comments objecting to the Commission's methodology for determining FY 1999 regulatory fees for CMRS mobile services.<sup>2</sup>

The Commission has proposed an FY 1999 regulatory fee for CMRS mobile services of \$0.32 per mobile unit — an increase of 10 percent from \$0.29 per mobile unit in FY 1998 and 33 percent higher than the fee of \$0.24 per mobile unit imposed for FY 1997. The Commission states that it has calculated the regulatory fee obligations for CMRS mobile services in part on an estimate of 55,540,000 mobile units

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<sup>1</sup> PrimeCo is the broadband A/B Block PCS licensee or is the general partner/majority owner in the licensee in the following MTAs: Chicago, Milwaukee, Richmond-Norfolk, Dallas-Fort Worth, San Antonio, Houston, New Orleans-Baton Rouge, Jacksonville, Tampa-St. Petersburg-Orlando, and Miami.

<sup>2</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 1999, Notice of Proposed Rulemaking*, MD Docket No. 98-200, FCC 99-44 (released March 24, 1998) ("NPRM"); see AirTouch Comments, filed Apr. 19, 1999; BellSouth Comments, filed Apr. 19, 1999; CTIA Comments, filed Apr. 6, 1999.

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assigned to customers.<sup>3</sup> In turn, this figure, according to the Commission, is based on an adjustment of FY 1998 payment units “to take into consideration industry estimates of growth between FY 1998 and FY 1999 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.”<sup>4</sup>

While the Commission, according to the *NPRM*, “tried to obtain verification for these estimates from multiple sources” and used means such as “industry and trade association projections when available,”<sup>5</sup> it is unclear from the *NPRM* how it derived this number and its so-called updated estimate falls well below both accepted industry subscribership estimates and what Chairman Kennard himself has stated publicly regarding industry subscribership. As CTIA noted in its comments, its most recent survey indicates that total subscribership is over 69,000,000, and this represents an estimate similar to the numbers reported by both Merrill Lynch and Donaldson, Lufkin & Jenrette.<sup>6</sup> Indeed, Chairman Kennard in touting the competitiveness of the wireless industry and presenting the Commission’s budget estimates before Congress has, in reliance on CTIA-compiled figures *from June 1998*, acknowledged that there are over 60

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<sup>3</sup> *NPRM* at Att. C.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> CTIA Comments at 6-7 (citing Mutschler and Wuh, *The Next Generation III: Wireless in the US*, Mar. 10, 1999 at 14 (68 million), and Leibowitz, *The Wireless Communications Industry*, Winter 1998/1999 at 16-17 (69 million)).

million subscribers and, more recently, stated that “there are over 68 million Americans who own a mobile phone.”<sup>7</sup>

Moreover, as noted above, it is impossible to determine how, in fact, the Commission’s payment unit figure was derived. The Commission has provided only conclusory data regarding its methodology for determining CMRS carriers’ fee obligations. No underlying information is presented regarding the industry projections or estimates it used, nor does the Commission address how it accounted for other possible variables.<sup>8</sup> Indeed, meaningful comment beyond that provided herein and in other CMRS carriers’ filings is difficult, given the paucity of discussion and the absence of supporting data in the *NPRM*.

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<sup>7</sup> See Chairman William Kennard, “A New Federal Communications Commission for the 21st Century,” Testimony before the House Commerce Subcommittee on Telecommunications, Trade, and Consumer Protection, March 17, 1999, App. A (“[m]obile phones are now a common tool for over 60 million people”); Chairman William Kennard, Testimony before the House Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, April 14, 1999 (same), Chairman William E. Kennard, *Crossing Into the Wireless Century*, New Orleans, LA, CTIA Convention, Feb. 9, 1999.

<sup>8</sup> For example, the Commission states that it also looked to licensee databases and actual prior year payment records and “[w]here it made sense . . . adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly” such as waivers or exemptions. *NPRM* at Att. C. PrimeCo respectfully submits that this rationale hardly explains how this important calculation was performed. Moreover, even assuming *arguendo* that total “mobile units assigned to customers,” may not correspond exactly to subscribership levels (see *Assessment and Collection of Regulatory Fees for Fiscal Year 1995 Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act, Report and Order*, 10 FCC Rcd. 13512, ¶ 85 (1995)) this certainly does not account for the enormous discrepancy between the Commission’s figures and accepted industry subscribership estimates.

Nevertheless, given the Commission's acknowledgment that "[w]hen the number of payment units in a service increase from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable," it is clear that the fee of \$0.32 must be adjusted downward to reflect more updated figures reflected in the record in this proceeding.<sup>9</sup> Furthermore, as CTIA and AirTouch have noted, the Commission also appears to have overstated the CMRS industry's share of the costs of regulation.<sup>10</sup>

As PrimeCo noted in last year's proceeding, telecommunications carriers in particular are already subject to a number of expanding regulatory assessments, including regulatory fees, which invariably will affect the price and/or the quality of CMRS services for consumers.<sup>11</sup> As PrimeCo also noted last year, Congress has mandated a market-based, deregulatory approach for CMRS licensees; and, again as PrimeCo predicted last year, carriers "increasingly, and justifiably, question whether the methodology for assessing [regulatory] fees comports with the Commission's public interest mandate."<sup>12</sup> The comments filed this year echo those legitimate concerns.<sup>13</sup>

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<sup>9</sup> *NPRM* ¶ 12 n.18.

<sup>10</sup> *See* AirTouch Comments at 2; CTIA Comments at 5-6.

<sup>11</sup> *See* PrimeCo Reply Comments in MD Docket No. 98-36, filed May 4, 1998, at 2.

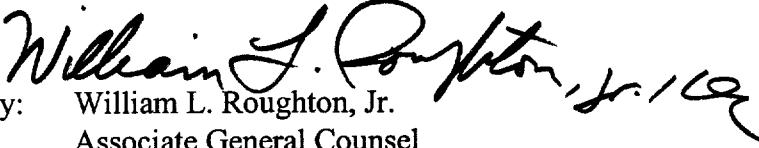
<sup>12</sup> *See id.* (citing 47 U.S.C. § 332(c)).

<sup>13</sup> *See* AirTouch Comments at 1-3; BellSouth Comments at 7-8; CTIA Comments at 2-5; *see also* Rural Telecommunications Group *Ex Parte* Presentation, Apr. 14, 1999, at 3.

In conclusion, PrimeCo again urges the Commission to ensure that the fees imposed are "reasonably related to the benefits provided to" fee payors, as required by statute.<sup>14</sup> The adjustments to CMRS carriers' FY 1999 regulatory fee obligations that CTIA has outlined will further this objective and PrimeCo urges the Commission to make the requested revisions.

Respectfully submitted,

**PRIMECO PERSONAL COMMUNICATIONS, L.P.**

  
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April 29, 1999

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<sup>14</sup> 47 U.S.C. § 159(b).

**CERTIFICATE OF SERVICE**

I, Jo-Ann G. Monroe, hereby certify that on this 29th day of April, 1999 copies of the foregoing Reply Comments of PrimeCo Personal Communications, L.P. were served by first class U.S. mail, postage prepaid, to the following:

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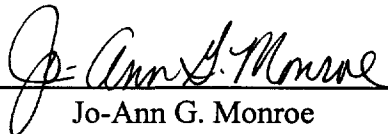
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